NAIFA | Advocacy

Standard of Care

THE ISSUE: Protecting consumers who seek advice from financial professionals is necessary to ensure Americans have the confidence to seek out help with financial guidance and planning. NAIFA members agree to abide by the NAIFA Code of Ethics, which requires them to work in the best interests of their clients. NAIFA supports public policy that furthers this aim without limiting consumer choice or creating barriers that could prevent all Americans from accessing needed financial products, services, and advice.

The Department of Labor is developing additional rulemaking that is widely expected to restore much of the vacated 2016 rule and seek a fiduciary-only approach. Unfortunately, as we learned from experience, the result will be millions of low and middle-income Americans losing access to the products and services they need to help them achieve their financial and retirement objectives. This approach would eliminate support from financial professionals who receive one-time commissions and leave only fiduciaries available for those with substantial savings willing to pay ongoing service fees. Proponents of this approach claim that it would ensure financial professionals act only in the interests of their clients. However, studies show that the net effect of a fiduciary-only approach would make guidance unavailable to many who need it and widen the racial wealth gap.

For example, a recent study by the Hispanic Leadership Fund found that restoring the 2016 rule would reduce the projected accumulated retirement savings of 2.7 million individuals with incomes below $100,000 by approximately $140 billion over ten years and would shut down access to financial inclusion for 10 million households.

BACKGROUND: A fiduciary-only approach was first proposed by the Obama Administration in 2010. After lengthy public comment and a hearing, strong opposition to the proposed regulation caused it to be withdrawn. In 2015, President Obama announced a new proposal which led to a final fiduciary-only regulation in 2016. It was struck down by the 5th U.S. Circuit Court of Appeals in 2018.

The National Association of Insurance Commissioners (NAIC) revised model regulation on annuity transactions, together with the Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI) and the new DOL PTE 2020-02, provide a robust framework that protects Americans planning and saving for the future and managing their retirement nest eggs.

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BACKGROUND (CONT.): The Best Interest standard requires a financial professional to act in the consumer's best interest without placing his financial interest ahead of the consumer's interest. A financial professional must satisfy four conduct obligations to meet the Best Interest standard: the care obligation, the disclosure obligation, conflicts of interest obligation, and the documentation obligation.

Twenty-three states have already adopted rules or laws patterned after the NAIC model. These protections address the conflicts of interest concern that drove a federal regulation.

NAIFA POSITION: Financial protection should not limit financial options. NAIFA encourages regulators to support the Best Interest standard to significantly enhance consumer protections without making access to financial products inaccessible for working-class Americans.

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